IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 555 of 2000

in

SPECIAL CIVIL APPLICATIONNo 1125 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MARKANDEYA SINGH, S/O LATE GANESHSINGH K RAJPUT
Versus
STATE OF GUJARAT

Appearance:
MR GM JOSHI for Appellant

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/09/2000

ORAL JUDGEMENT (Per: R.K. Abichandani.J)

#. The appellant challenges the order of the learned Single Judge rejecting his petition in which the order dated 8.1.1997 removing his father Ganeshsingh K.Rajput from service was challenged by him. According to the petitioner, his father was serving as an unarmed police constable under the administrative control of the respondents nos 3 and 4 since the year 1973. As the petitioner's father was suffering from Tuberculosis, he was taking continuous treatment for the same . But when his condition was further deteriorated, he proceeded to his native place on 31.12.1993. Ultimately, he passed away on 17.3.1997. It is stated that when a communication was received in the year 1996 by the petitioner's father, he could not read or understand the same as it was in Gujarati and also because of his physical condition. In April 1998, a communication was received that an amount of Rs. 5,620/payable to the petitioner's father was lying with the SRP force and was required to be withdrawn. It is stated that the said communication was in Hindi and therefore, it could be understood. It is then stated that the petitioner ultimately approached one Jagatsingh of his village who was working with a leading advocate of the Supreme Court Mr. Bhushan Singh(The learned counsel has stated that this name is wrongly written) and the petitioner was advised to approach another advocate at Ahmedabad. The petitioner contacted that advocate and they came to know that articles which were lying at the residential quarter which was earlier occupied by the petitioner's father were with the authorities. After the petitioner came to know about the removal from service of his father in February 1999, the petitioner preferred an appeal dated 1.3.1999 before the respondent authorities, a copy of which is at Annexure.C to the petition. It is further stated that in the year 1999 the petitioner's mother received a communication and presuming that it was relating to pension papers, she had affixed her thumb impression and duly return it to the authorities. A copy of that communication is at Annexure.D collectively to the petition (page 39). That communication was regarding payment of the difference arising due to revision of pay scale. The petitioner in the background of these facts, and annexing the papers pertaining to the departmental proceeding at Annexure.B to the petition, challenged the order of removal from service which was passed against his father on the ground that since the petitioner's father was not knowing Gujarati and nobody else was knowing Gujarati and none in the village which is in

Bihar knew Gujarati, the show cause notice had remained unattended and further that had there been a slighest inkling that the petitioner's father would be removed from service, he would have "resigned" from service so that he could have got his pension.

#. The learned Single Judge took note of the fact that the petitioner's father Ganeshsingh was serving as a constable in the State of Gujarat, and in the year 1994 he had gone away to his native village in Bihar without getting any leave sanctioned or even intimating to his superior officers. Despite several notices, he did not respondent and ultimately, after the disciplinary proceedings he came to be removed from service by the impugned order which admittedly was served on Ganeshsingh at his native place. The learned Single Judge noted that Ganeshsingh had never challenged that order. After considering various contentions which are also raised before us, the learned Single Judge, taking into account the undisputed fact that Ganeshsingh who had worked in the State as constable for about 20 years, did not respond to the notices issued to him nor to the impugned order of removal which was not challenged by him during his life time, held that the petitioner could not challenge that order after such a long delay of more than 3 years and that the reasons for the gross delay which were putforth by the petitioner were not acceptable. It was also observed that right to service was a personal right which late Ganeshsingh could have pursued during his life time and on his death, his representatives could not have pursued that right . Dealing with the contention that the order of removal cast a stigma upon his late father and therefore the petitioner could challenge it, the learned Single Judge rejected the contention on the ground that there was no such right in the petitioner to challenge the penalty of removal imposed on his father by way of punishment as a result of the departmental inquiry.

#. The learned counsel for the appellant contended that in a remote village in Bihar where no one understood Gujarati, the notices which were sent even if they were served or the order which was sent would not have been understood by anyone including Ganeshsingh who did not know Gujarati and was not in a fit state to respond. The thrust of the argument was that principles of natural justice have been violated because the show cause notice and all the proceedings that took place pursuant thereto were in Gujarati and Ganeshsingh not having known Gujarati was therefore, not given an adequate opportunity of hearing. It was also contended that the notices were

initially affixed at his residential quarter and thereafter the same notice was sent to his native village. The contention that a constable who had served for about 20 years in Gujarat did not know Gujarati can hardly be accepted. He was in unarmed police constabulary and such constabulary which has interaction with the local people would be expected to know the local language and even if initially when he joined the service, he did not know Gujarati, he had ample opportunity during twenty years of his service in the police force to know Gujarati. This would be more so when the requirement of knowing of the local language is usually connected with the services under the State of Gujarat. It is also difficult to comprehend that a constable who had put in 20 years service would not know the nature of the proceedings which were held against him.

#. In the charge sheet it was alleged that Ganeshsingh was absent without leave from 1.1.94 and in that connection he was served with notices dated 10.1.1994, 25.1.94, 7.2.94 and 14.12.95 and on 14.2.1994 which notice could not be served on him as he had gone to Bihar . Since he had remained absent from 1.1.1994 the articles lying in his residential quarter were taken in custody under a panchnama because it was a Government accommodation provided to him. A list was annexed with the charge sheet showing the EL, sick leave, half pay leave and without pay leave taken by Ganeshsingh from time to time and it was alleged that he was a habitual absentee. It was also stated that Ganeshsingh had submitted medical certificate in connection with his disease Tuberculosis from 1.2.94 to 30.4.94 issued by a Government doctor and thereafter by a private doctor on 31.7.94 and that thereafter, no medical certificate or any message was received from his side in the office. Ganeshsingh was given a show cause notice on these allegations which gave him an opportunity to meet with the charges. In the order dated 24.6.96 there is an indication that the charge sheet was sent by registered post AD which was served on him on 26.5.96. It was noted that no defence reply was sent although the charge sheet was duly served. On 2/10-11-96, the show cause notice relating to proposed punishment was issued as per the Rules to Ganeshsingh proposing the punishment of removal and ultimately the impugned order dated 8.1.97 came to be passed by the competent authority. It is clear from the impugned order that it has been made on the basis of the material on record and after an adequate opportunity having been offered to Ganeshsingh to meet with the charges which were levelled against him as also against

the proposed punishment. It was held that by his continued absence from 1.1.94 as stated in the charge sheet, Ganeshsingh had caused "scarcity of one police constable for law and order" The impugned order was clearly made in exercise of the powers conferred on the competent authority on the grounds which were germane to the decision taken and cannot be assailed for the reason that Ganeshsingh did not know Gujarati.

#. The learned counsel for the appellant assailed the impugned order as if the learned Single Judge had rejected the petition on the ground that it was not maintainable because the right to sue did not survive. He placed reliance on the decision of this Court in the case of Management of Bank of Baroda vs. Workmen of Bank of Baroda reported in 20 GLR 335 in which while dealing with the case wherein the workman had died after the industrial dispute was raised but before the matter was heard, it was held that the heirs and legal representatives of the deceased workman were entitled to have the matter decided by the Industrial Tribunal. It was held that under section 306 of the Indian Succession Act the right to prosecute the special proceedings before the Tribunal survived in favour of the administrators, executors, heirs and legal representatives of the deceased workman. The court held that on the death of the workman even when the reference was an individual dispute under section 2A of the Act, the Tribunal did not become functus officio and the order of reference did not abate merely because pending adjudication by the Tribunal, the workman concerned died. The learned counsel for the appellant also relied on the decision of the Calcutta High Court in the case of Executive Director of Usha Sewing Machine Works Ltd. and another vs. Sm. Sujata Roy and others reported in AIR 1986 (Calcutta) 224 in which, again in the context of the provisions of section 306 of the Indian Succession Act, it was held that the first part of that provision clearly provided for the survival of the right to sue or defend in favour of or against the executor or administrators of a deceased party in an action; while the second part put a limitation on such right by recognising and applying the maxim " actio personalis moritur cum persona" only in an action for defamation, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the reliefs prayed could not be enjoyed or granting them would be nugatory.

#. In our opinion, the learned Single Judge has rejected the petition mainly on the ground that the reasons for

delay in challenging the order of removal given by the petitioner could not be accepted and that the petitioner could not challenge the impugned removal of his father from service after such a long delay of more than three years. Even the observation of the learned Single Judge that the right to service was a personal right and unless the same was pursued by late Ganeshsingh, his heirs could not have pursued it has to be read in its correct perspective. There can hardly be any dispute over the proposition that right to serve as an employee would be a personal right. In a contract of employment, the person who engages himself to render services has to himself function as an employee and his heir or legal representative cannot step into his shoes for the purpose of rendering services as an employee. It is in this context that the learned Single Judge has observed that right to service is a personal right and when it was not pursued by Ganeshsingh himself, his heirs could not pursue it. This was not a case of claiming any damages or pursuing a suit which was already filed by the ex-employee. In our opinion , there is absolutely no warrant for interference of the impugned order of the learned Single Judge. The appeal is, therefore, summarily dismissed.

#. It will be open for the appellant to approach the Governmental authorities for any compassionate appointment if permissible under the Rules or even to take departmental recourse against the order, if permissible under the relevant rules and regulations.

(R.K.Abichandani.J)

(D.A.Mehta.J)

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